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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KATHY SPENCER, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B185510 (Los Angeles County Super. Ct. No. BC 313922)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Edward A. Ferns, Judge. Affirmed.

Oddenino & Gaule and John V. Gaule for Plaintiff and Appellant.

Raymond G. Fortner, Jr., County Counsel, Roger Granbo, Assistant County Counsel, Ali Reza Sabouri, Deputy County Counsel, for Defendant and Respondent.

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We hold that a county probation officer's alleged negligence in preparing and filing a probation report that led to the issuance of a bench warrant for plaintiff's arrest and plaintiff's subsequent arrest and imprisonment for violation of probation is conduct immune from liability under Government Code section 821.6. We therefore affirm the summary judgment entered against plaintiff in her action against the County of Los Angeles for negligence and false imprisonment as the result of the probation officer's erroneous report.

BACKGROUND

On July 5, 1994, plaintiff and appellant Kathy Spencer (plaintiff) was convicted of driving with a suspended license in Los Angeles Superior Court case number 94M03762. Plaintiff was placed on probation for a period of three years and was ordered to pay a fine of $1,756. On July 2, 1997, a probation violation hearing was held, and plaintiff admitted to being in violation of probation. Plaintiff was ordered to pay an additional $870, and her probation was revoked but reinstated and continued on the same terms and conditions. Despite the fact that plaintiff's probation had apparently expired by its own terms on July 5, 1997, another probation violation hearing was held on June 2, 1998, and plaintiff again admitted to being in violation of probation. Plaintiff's probation was revoked and reinstated on the same terms and conditions, with the modification that plaintiff pay an additional fine of $540.

On June 14, 2002, a probation report was filed, along with a written request for a hearing by the county probation department. On August 6, 2002, plaintiff's case came before the superior court pursuant to the probation department's written request. At the August 6, 2002 hearing, Superior Court Judge Thomas A. Peterson issued a bench warrant for plaintiff's arrest, after reviewing and considering the June 14, 2002 probation report. The probation officer's report apparently did not indicate that plaintiff's probation period had expired.[1]

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[1] The probation officer's report was not included in the record on appeal, nor was it submitted to the trial court in the summary judgment proceeding.

In July 2003, plaintiff was arrested by Buena Park police officers pursuant to the bench warrant issued in August 2002. A bench warrant hearing was held on July 21, 2003, and plaintiff admitted to being in violation of probation. Judge Peterson terminated probation and sentenced plaintiff to 270 days in county jail. Plaintiff served nearly a month and a half of the unlawfully imposed sentence before that sentence was recalled and plaintiff was released.

On September 3, 2003, a motion was filed to recall plaintiff's sentence based on lack of jurisdiction and the expiration of her probationary period. A hearing on the motion was held on September 12, 2003, and Superior Court Commissioner Anthony Peters recalled plaintiff's sentence, terminated probation, and ordered plaintiff released from custody. Plaintiff filed a claim for damages with the County on October 8, 2003. The County rejected the claim, and on April 20, 2004, plaintiff filed this action for negligence and false imprisonment, claiming that she was unlawfully arrested and imprisoned for being in violation of probation because of an erroneous report prepared by a county probation officer.

The trial court granted summary judgment in the county's favor, concluding that the county was immune from liability under Government Code sections 820.2 and 821.6. Plaintiff contends the summary judgment must be reversed because Government Code section 820.2 applies only to conduct involving an actual exercise of discretion, and because the statute does not immunize a public employee from negligence in performing ministerial acts such as calculating when an individual's probationary period has expired. Plaintiff further contends that Government Code section 821.6 does not apply because that statute does not immunize a public employee from claims of false imprisonment.

The county moved for summary judgment, which the trial court granted in the county's favor, on the ground that the probation officer and the county were immune from liability under Government Code sections 820.2 and 821.6. Plaintiff filed this appeal.

DISCUSSION

A. Standard of Review

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.)

On appeal from a summary judgment, an appellate court makes "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law." (*Iverson v. Muroc Unified School Dist.* (1995) 32 Cal.App.4th 218, 222.) "In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing [plaintiff's] evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor. [Citations.]" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768- 769.) We also review de novo issues of statutory construction. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683.)

B. Immunity Under Government Code Section 821.6

Government Code section 821.6 provides: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." "The plain language of [Government Code] section 821.6 and its legislative history demonstrate the Legislature intended this section to protect public employees from liability for malicious prosecution when they have acted within the scope of their employment. (Sen. Com. on Judiciary Rep. on Sen. Bill No. 42, 2 Sen. J. (1963 Reg. Sess.) 1885, 1890 (hereafter Senate Report); *Sullivan v. County of Los Angeles* (1974) 12

Cal.3d 710, 719 [117 Cal.Rptr. 241, 527 P.2d 865].)" (*Tur v. City of Los Angeles* (1996) 51 Cal.App.4th 897, 901.) "'[M]alicious prosecution "consists of initiating or procuring the arrest and prosecution of another under *lawful process,* but from *malicious motives* and *without probable cause*. . . ."' [Citation.]" (*Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 757.) The immunity conferred by the statute is not limited to prosecutors but has been extended to social workers investigating allegations of child abuse and initiating detention proceedings (*Jenkins v. County of Orange* (1989) 212 Cal.App.3d 278, 285), public school officials (*Hardy v. Vial* (1957) 48 Cal.2d 577, 583), heads of administrative departments (*White v. Towers* (1951) 37 Cal.2d 727, 731), county coroners (*Stearns v. County of Los Angeles* (1969) 275 Cal.App.2d 134, 137), and members of county boards of supervisors (*Dawson v. Martin* (1957) 150 Cal.App.2d 379, 382.)

Government Code section 821.6 immunizes the probation officer's conduct at issue here. The probation officer who filed the allegedly erroneous report and requested the hearing that culminated in the issuance of a bench warrant for plaintiff's arrest was acting in the course of his or her employment in initiating a judicial proceeding, in this case, a probation violation proceeding. Government Code section 821.6 immunizes the probation officer's conduct, "even if he acts maliciously and without probable cause." (Gov. Code, § 821.6.) That immunity also applies to allegations of negligence. (See *Jenkins v. County of Orange, supra,* 212 Cal.App.3d at p. 286.) The probation officer's alleged negligent undertaking of the acts at issue in this case is therefore immune from liability under Government Code section 821.6.

Plaintiff argues that Government Code section 821.6 only protects public employees from liability for malicious prosecution and does not immunize the probation officer and the county from liability for false imprisonment, citing Government Code section 820.4 and *Sullivan v. County of Los Angeles, supra,* 12 Cal.3d 710. Government Code section 820.4 states: "A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for . . . false imprisonment." Even if plaintiff

purported to plead a false imprisonment cause of action, as we discuss, plaintiff has adduced no facts to establish such a cause of action against the county.

"'False arrest or imprisonment and malicious prosecution are mutually inconsistent concepts, the former relating to conduct that is without valid legal authority and the latter to conduct where there is valid process or due authority.' [Citation.]" (*Asgari v. City of Los Angeles, supra,* 15 Cal.4th at p. 757.) "'"The distinction between the two lies in the existence of valid legal authority for the restraint imposed. If the defendant complies with the formal requirements of the law, as by swearing out a valid warrant, so that the arrest of the plaintiff is legally authorized, the court and its officers are not his agents to make the arrest, and their acts are those of the law and the state, and not to be imputed to him. He is therefore liable, if at all, only for a misuse of legal process to effect a valid arrest for an improper purpose. The action must be for malicious prosecution, upon proof of malice and want of probable cause, as well as termination of the proceeding in favor of the plaintiff. . . ." ". . . [T]he difference is one of the regularity of the legal process under which the plaintiff's interests have been invaded. If he is arrested or confined without a warrant, or legal authority apart from a warrant, malicious prosecution will not lie, since the essence of that tort is the perversion of proper legal procedure, and the remedy is false imprisonment. On the other hand, if there is valid process or due authority apart from it, the arrest is not 'false' and the action must be one of malicious prosecution.'"' (*Collins v. City and County of San Francisco* (1975) 50 Cal.App.3d 671, 676-677, quoting *Bulkley v. Klein* (1962) 206 Cal.App.2d 742, 746-747.)

Under the foregoing standards, plaintiff failed to establish a cause of action against the county for false imprisonment. The evidence presented shows only that the probation officer negligently instituted a judicial proceeding, based on erroneous information, to effect plaintiff's arrest. The officer "is therefore liable, if at all, only for a misuse of legal process to effect a valid arrest for an improper purpose. The action must be for malicious prosecution. . . ." (*Collins v. City and County of San Francisco, supra,* 50 Cal.App.3d at

p. 677, quoting *Bulkley v. Klein, supra,* 206 Cal.App.2d at p. 746-747), for which Government Code section 821.6 accords immunity.

Plaintiff failed to establish a cause of action against the county for false imprisonment. Plaintiff does not allege that the warrant for her arrest was invalid on its face or that the arresting officers knew that the warrant was invalid.[2] Plaintiff accordingly did not establish that her arrest and imprisonment were not under "due forms of law" and "color of legal authority." (*Collins v. City and County of San Francisco, supra,* 50 Cal.App.3d at p. 677.) Plaintiff also failed to establish any involvement by the county in her allegedly unlawful arrest. It is undisputed that plaintiff was arrested, not by the probation officer or another county employee, but by Buena Park police officers. In some circumstances, an officer who knowingly provided false information to obtain an arrest warrant valid on its face may be liable for a false arrest, but only if that officer also made the arrest or participated in it. (*Martinez v. City of Los Angeles* (9th Cir. 1998) 141 F.3d 1373, 1380; *Harden v. San Francisco Bay Area Rapid Transit Dist.*, (1989) 215 Cal.App.3d 7, 17; *McKay v. County of San Diego* (1980) 111 Cal.App.3d 251, 257.)

Sullivan v. County of Los Angeles, supra, 12 Cal.3d 710, on which plaintiff relies, is distinguishable. The plaintiff in that case brought an action for false imprisonment against the county based on the sheriff's failure to release him, and alleged that the sheriff acted "'with knowledge . . . that there were not charges of any kind pending against [him] and that [he] was entitled to his [release] and freedom'". (*Id.* at p. 714.) Here, there was no allegation that any County employee knowingly imprisoned plaintiff without cause or knowingly failed to release her once the error was uncovered.

The conduct of the probation officer in this case is immune from liability under Government Code section 821.6. Because the probation officer's actions are immune from liability, the county also has no liability for those actions (Gov. Code, § 815.2, subd.

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[2] "'[F]alse arrest' and 'false imprisonment' are not separate torts. False arrest is but one way of committing a false imprisonment. . . ." (*Collins v. City and County of San Francisco, supra,* 50 Cal.App.3d at p. 673.)

(b))[3], and we affirm the summary judgment on that basis. We therefore need not address whether the immunity accorded by Government Code section 820.2 also applies in this case, or whether the doctrine of quasi-judicial immunity applies.

DISPOSITION

The judgment is affirmed. The parties will bear their respective costs on appeal.

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MOSK. J.

We concur.

TURNER, P.J.

KRIEGLER, J.

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[3] Government Code section 815.2, subdivision (b) provides: "Except as otherwise provided by statute, a public entity is not liable for any injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability."